IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 209 of 1999

Reserved on : 30th July, 2007.
Date of Decision: 1st August, 2007.

Land Acquisition Collector & another Appellants
Versus
Nand Lal and another Respondents.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellants: Mr.M.S.Chandel, Advocate General, with Mr.C.B.Singh, Dy. Advocate General.

For the respondents: Mr.Bhupender Gupta, Sr. Advocate, with Mr.Janesh Gupta, Advocate.

Sanjay Karol, J.

The present appeal arises out of an award dated 9th March, 1999 passed by District Judge, Solan, in Land Reference No.71-S/4 of 1994/93, titled as Nand Lal and another v. Land Acquisition Collector and others.

The respondents land admeasuring 0-16 Bighas, comprised in Khewat Khatauni No.108/123, Khasra No.1145/191/1 measuring 0-8 Bigha and Khasra No. 192/1 measuring 0-8 Bigha, situate in Village Bikrampur-Patti-Domehar, Tehsil Arki, District Solan, was acquired for public purpose, namely, construction of Kunihar-Kunni-Domehar road, in terms of Notification dated 20th July, 1991 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) and award No.4/92 dated 30.6.1992

Whether the reporters of Local Papers are allowed to see the Judgment?

was passed by the Collector. In terms of the said award the market value of the acquired land was assessed by the Collector at Rs.15,000/- per bigha.

Being dissatisfied with the same, respondents preferred a petition under Section 18 of the Act claiming the market value of the acquired land at Rs.1,50,000/- per bigha.

The Court below framed the following issues:-

"1. Whether the petitioners are entitled to enhanced amount of compensation on account of the acquisition of their land. If so to what extent and amount? OPP

2. Whether there has been severance of the holding of the petitioners on account of the acquisition of land in question? OPP

3. Relief."

After examining the respondents-claimants' witnesses (three in number) and appellants' witness (one in number), the Court below enhanced the compensation from Rs.15,000/- to Rs.50,000/- per bigha for the acquired land.

The respondent No.1 appeared as PW-1 and has admitted that the land in question is at an equal distance from places Arki and Kunihar. The distance from Arki and Kunihar is 20 Kms. and the land is in the centre of the two places.

The respondents have to be paid compensation as per the market value of the land, which is so determined on the basis of the evidence produced in the Court from which can be inferred as to what is the true market value of the land on the date of initiation of the acquisition proceedings. One of the criteria of course is to establish through cogent evidence that at the relevant date the market value of the

land in question was such on which the vendor and vendee are willing to sell or purchase the land.

In his effort to prove the fair market value, respondents have produced Parshotam Dass, PW-2, who has stated that he has sold 1 Biswa of land for a sum of Rs.9,000/- in the year 1992. His statement cannot be relied upon and considered for the simple reason that his sale transaction is after the date of issuance of the Notification under Section 4 of the Act.

Daya Ram, PW-3, whose land was also acquired in Village Bikrampur for construction of the same public purpose has proved on record copy of award dated 2nd August,1996, Ext.PX, to show that in his case the compensation awarded is at the rate of Rs.66,666/- per Bigha. This award has not been accepted by the Court below for the simple reason that the land of the witness (PW-3) is at a distance of 3-4 Kms. from the acquired land and is also located in a different Patwar circle. The Court below has not considered the said award to be binding and rightly so for the reason that there is nothing on record to show the similarity with regard to location, nature, potential between the two lands.

In rebuttal, the appellants have produced Bagga Ram (DW-1) who has proved sale deed Ext.PB, (also proved by respondent No.1 as Ex.P1) the same was rightly rejected by the Court below for the simple reason that the same does not reflect the true market value of the land as the consideration for the sale transaction was fixed several years prior to its registration on 12th December, 1990.

Learned Advocate General for the appellants has argued that Court below erred in not looking into the other sale instances, copies of which were exhibited being Ext.RA and Ext.RC and Ext.P1 to

Ext.P5. According to him in view of the present legal position, the same can be looked into by this Court. He further argued that even though the Court below has come to a finding that award Ext.PX cannot be made basis for determining the compensation, however, he has relied upon the same to assess the market value of the acquired land. The said award cannot be looked into as the acquired land involved in the said award is situate in the heart of township of Kunihar, having all the facilities of a modern urban area and the acquired land cannot be compared with the same at all.

Perusal of the impugned award would show that the Court below has held that the Award, Ext.PX is not binding and determinative of fair market value of the land for the reason that while determining the same, evidence was led to prove several sale transactions pertaining to the same village whereby compensation @ Rs.66,666/- per Bigha was awarded.

I am not in agreement with the submission made by the learned counsel for the respondents that Ext.PX, being judgment of the Court, would have a greater persuasive value and it should be made the basis for determining the fair market value. Undoubtedly the award pertains to the land acquired for the very same public purpose for which the acquisition proceedings were initiated in the year 1988 and the Court can preserve and take notice of the increase in price of land by 12% to 15% every year, but there is nothing on record to show the similarity of value, nature, quality or location of the two lands. The contention is not accepted for the reason that Ext.PX not only pertains to different Patwar Circle and village at a distance of 3-4 Kms. but is in relation to land which is in the heart of township of village Kunihar having great potential and commercial value. From Ext.PX, it is clear

that facility of high school (10+2), Primary Health Centre, Petrol Pump, Post Office is in the vicinity of the acquired land. Additionally, several sale transactions have been proved on record to determine the market value which is fair and reasonable.

In the present case from the perusal of the statement of witnesses (including that of PW-1), it is clear that potentiality of the acquired land, can by no stretch be compared with the land acquired in terms of the award Ext.PX. In the present case, the acquired land is at a distance of approximately 10 Kms. from village Kunihar and there are no facilities available as are available in Kunihar. Therefore, the award Ext.PX has rightly not been considered by the Court below so as to be determinative of the fair market value. The contention of the learned counsel for the respondents that the Court while making Ext.PX as base must presume increase in rise in prices of 12% to 15% is, therefore, rejected.

In the absence of any such sale transactions in relation to the area in question i.e. the acquired land, the Court has proceeded to determine the compensation on the basis of guess work. A perusal of the award would show that no reason has been given to arrive at a figure of Rs.50,000/- fixing the market value to be just, fair and reasonable as on the date of the initiation of the acquisition proceedings. The Court below ought to have assigned reasons for arriving to a figure of Rs.50,000/- per Bigha.

I would now consider the sale instances produced by the parties being Ext.RA, Ext.RC and Exts.P1 to P5. Ext.RA cannot be considered for the simple reason as the same pertains to the year 1988 and Ext.RC is the sale deed dated 25th June, 1991 of 1 Bigha 3 Biswas of land sold at a sum of Rs.5000/-. Ext.P1, also produced by the

appellants and exhibited as Ext.RB, the sale deed dated 18th December, 1990 of 4 Bighas 4 Biswas of land sold at Rs.10,000/- per bigha has been rightly rejected by the Court below cannot be considered to determine the fair market price. Similarly, Exts.P3, P4 and P5 pertain to the years 1992-93 and 1995 and therefore, cannot be considered to determine the fair market value as on the date of issuance of Notification under Section 4 of the Act.

This leaves us with Ext.P-2, sale deed dated 3rd September, 1990 whereby 4 Biswas of land has been sold for a sum of Rs.5,000. Learned Advocate General has fairly submitted that Ext.P2 can be considered for the purposes of determining fair market value. As has been noticed in the foregoing paragraphs, the said sale document has been relied by the respondents themselves and in my view would be determinative of the fair market value for the reason that not only does it pertain to the village where the land has been acquired but also closer to time of issuance of Section 4 Notification. The existing market value of the land has to be determined keeping in view the evidence brought on record by the claimants. In terms of the said sale deed, the compensation to which the respondents are entitled to is determined at Rs.1250/- per biswa x 20 = Rs.25,000/- per Bigha plus solatium plus interest thereupon in accordance with law.

Perusal of the award would show that the Court below has further erred in awarding interest from the date of possession i.e. 1st January, 1981. The Award is evidently contrary to the provisions of law and the respondents would be entitled to interest only from the date of issuance of Section 4 Notification i.e. 20th July, 1991.

Perusal of the award would also show that the respondents have not been granted benefit of the provisions of Section

23-A of the Act, which they are entitled to. Consequently, the respondents shall also be entitled to all benefits including solatium on the enhanced amount in accordance with law from the date of initiation of the acquisition proceedings.

For all the aforesaid reasons, the appeal is partly allowed. However, there shall be no order as to costs.

1st August, 2007
(C)

(Sanjay Karol)
Judge.